

OGC 76-1474

5 April 1976

MEMORANDUM FOR: Deputy Director of Security**SUBJECT : Files Which are the Subject of Recommendation 17,
Rockefeller Commission Report**

1. In preparation for your taking action in compliance with Recommendation 17 of the Rockefeller Commission Report, you have asked us to help identify the files which are the subject of the Recommendation. While your specific question referred to a definition of the word "dissidents," I believe the files which are the subject of this Recommendation are properly identified with a definition of the word "program" used in the phrase "the program relating to dissidents."

2. When reading the text of Chapter 12 of the Rockefeller Commission Report, it becomes apparent that Recommendation 17 corresponds to the text found in Part C of that Chapter. From my investigation of the files maintained by the Review Staff which were supplied to the Commission and from talking to Mr. Hunt of your office, it is clear that Project RESISTANCE is the subject of this recommendation.

3. Specifically, any files on individuals developed from the materials accumulated by Project RESISTANCE which do not relate to a legitimate foreign intelligence activity should be destroyed.

4. To the extent that you wish to identify other files which, though you are not required to destroy them, may be of the same character as those that are the subject of the Recommendations, it is again necessary to look beyond the word "dissidents." First, I would note that in the absence of a law or regulation requiring it, you are not required to keep any files you do not find useful and necessary. To identify files which may be included in the spirit of Recommendation 17, it is necessary to look at the new Executive Order, Number 11905, which basically prohibits the collection of information concerning the domestic activities of United States persons. Subsection vi of Section 5(b)(7) of the Executive Order does permit the

collection and retention of information by CIA concerning persons or activities that pose a clear threat to the Agency's facilities or personnel provided we coordinate this activity with the FBI.

5. Therefore, if we are to live within the intent of Recommendation 17 and destroy files which are not a valid subject of our concern, I believe we must look not to the word "dissident" found in the Recommendation, but the broader language found in the Executive Order. Thus, you may wish to consider destroying any files on any United States person's (as defined in the Executive Order) domestic activities which do not pose a clear threat to this Agency and any files which do not pertain to a legitimate foreign intelligence activity.

6. An example of files which should probably be destroyed would be those accumulated on individuals as a result of Project MERRIMAC (which is the subject of Recommendation 16). It is, of course, very difficult at times to know what should be retained or destroyed. This office will be happy to be of assistance when questions arise concerning the application of the Rockefeller Commission Report or the Executive Order to specific files.

7. When discussing the destruction of records we must be mindful of statutory and regulatory requirements and the "Mansfield Letter" concerning the retention of documents during the current Congressional investigations.

Office of General Counsel